



Virginia  
Regulatory  
Town Hall

Proposed Regulation  
Agency Background Document

<b>Agency Name:</b>	Department of Education
<b>VAC Chapter Number:</b>	8 VAC 20-360-10
<b>Regulation Title:</b>	Rules Governing General Educational Development Certificates
<b>Action Title:</b>	Proposed Regulation
<b>Date:</b>	October 22, 2001

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The proposed amendments to the current Rules Governing General Educational Development Certificates, hereafter referred to as GED regulations, are few and will have little operational effect on the overall Virginia GED Testing Program. The proposed changes are intended to clarify the regulations, align them with newly amended *Code of Virginia* elements that are germane to the regulations, and create flexibility that allows for procedural changes in the Virginia GED Testing Program through board action without necessitating regulatory action. The proposed changes also are intended to improve services for Virginians without undermining the integrity of the Virginia GED Testing Program.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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The legal authority to promulgate changes to 8 VAC 20-360-10 is found in §22.1-223 et seq. of the *Code of Virginia*. The Code provides discretion to the board in promulgating "appropriate standards and guidelines for adult education programs," including participation in preparing for and taking the GED Tests. It further requires the board to "assist school divisions with all diligence in meeting the educational needs of adults participating in adult education programs to master the requirements for and earn a Virginia General Educational Development (GED) Certificate or high school diploma."

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The Rules Governing General Educational Development (GED) Certificates were last amended in 1980. Since that time the American Council on Education, which has oversight of GED testing, has established new requirements for the program that are not reflected in the current regulations. Additionally, the *Code of Virginia* has been amended to include new GED programs for 16-year olds.

The GED Certificate is a well-respected and nationally recognized credential. To ensure the integrity of the GED credential and to ensure that the regulations related to the credential are consistent with the intent of the *Code of Virginia*, action should be taken to create new regulations that reflect current program practices.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

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There are more than 700,000 adults in Virginia who have not completed the requirements for a high school diploma or its equivalent. Without a high school diploma or its equivalent, adults have difficulty finding and/or maintaining employment that provides more than minimum wage. Illiteracy costs Virginia taxpayers nearly \$300 million a year due to unemployment, welfare, and loss of tax revenue.

All or part of the GED tests were administered to 17,485 individuals in Virginia in 2000, with 11,380 achieving scores high enough to qualify for a credential. The Individualized Student Alternative Education Plan (ISAEP) program implemented in the 1999-2000 school year and the initiative designed to increase the number of adult examinees have resulted in an increase in test administrations.

Successful achievement on the GED tests provides adults and eligible secondary students who have not or will not earn a high school diploma with the opportunity to earn a well-recognized secondary credential. Those who pass the GED tests earn a GED Certificate.

The GED Certificate is recognized by most employers, colleges, universities, and all of the armed forces.

A revision of the GED regulations is intended to accurately reflect the *Code of Virginia* and directives and guidelines provided by Superintendents' Memoranda over the years since 1980. The changes will have no adverse effect on GED program consumers.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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The public will benefit by amending the existing regulations and implementing a clear and understandable framework that will guide the Virginia GED Testing Program. The proposed amendment to the retesting rule, 8 VAC 20-360-20, will accelerate testing opportunities for those individuals who need to pass the GED Tests before employment is offered, enrollment in a post-secondary institution is granted, or enlistment in the armed forces is approved.

The amended GED regulations will be aligned to the *Code of Virginia* and will provide a clear framework that will guide Department of Education staff as they oversee the Virginia GED Testing Program. Department staff will be able to provide consistent interpretation of the GED regulations. Department staff also will be able to respond more effectively to GED examiners and assist in ensuring the integrity of the GED credentialing process.

There are no disadvantages anticipated as a result of amending the GED regulations.

### Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

No fiscal impact is anticipated if the proposed changes are accepted and implemented.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

The following changes are proposed for consideration:

1. 8 VAC 20-360-10, § 1: The following areas of eligibility require modification in order to align with §22.1-254.2 of the *Code of Virginia* and the policies and procedures of the GED Testing Service of the American Council on Education:
  - a) The age requirement should read that the applicant must be 18 years of age and not currently enrolled in school (see *Code of Virginia* §22.1-254).
  - b) Age requirement waivers addressed by the current GED regulations should be deleted since they are not completely consistent with the *Code of Virginia* §22.1-254.2. Less specific terminology will continue to allow age requirement waivers and will provide the board more flexibility in making changes without necessitating action to amend regulations.
  - c) The reference to "high school credit" in paragraph 2 of 8 VAC 20-360-10 (Eligibility) should be deleted as there is no high school credit requirement.

- a) The minimum time requirement of 30 days as a resident of the Commonwealth of Virginia should be deleted as there is no reliable means for establishing length of time as a resident.
  - b) The minimum test score requirement should be amended to reflect changes in the scoring as a result of the release of the [new] 2002 Tests of General Education Development. It is recommended that the language be less specific concerning what constitutes a passing score. This would allow the board to review and establish the passing score as a procedural function, and it can consider the issue as needed, making necessary changes without initiating the regulatory change process. Minimum test score requirements prior to December 31, 2001 will remain in effect.
2. 8 VAC 20-360-20 should be amended to permit a waiver of the 60-day waiting period before retesting. Some applicants are able to present compelling reasons that should permit a retest date earlier than the 60 days. These reasons include:
- a) To secure employment that is available only if the applicant has earned a GED Certificate;
  - b) To meet the enrollment deadline for a college, university, or other post-secondary training program; and
  - c) To enlist in one of the armed forces.
3. 8 VAC 20-360-30 should be amended to be less specific about the amount of fees for GED test administration and allow the board to take action to raise or lower fees during a regularly scheduled board meeting. Currently, regulatory action is required before the board can legally change the amount of the testing fee.

## Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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Age requirements for testing need to be reviewed. (Note: The American Council on Education has approved the age of 16 as the minimal age for testing.)

The option of eliminating the minimum number of days for determining residency needs to be considered. (Note: The American Council on Education has eliminated the requirement for a minimum number of days.)

Minimum passing scores at the time the student took the GED tests need to be considered for inclusion in the regulations.

Omitting language related to the fee structure in the regulations needs to be considered. Giving the Board of Education the authority to set the fee structure as changes need to be made would be more efficient than having to amend the regulations each time testing fees need to be adjusted.

**Public Comment**

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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No public comment was received at the Department of Education.

**Clarity of the Regulation**

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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The existing and proposed regulations have been reviewed by Department of Education staff. The proposed amendments are designed to better serve Virginians seeking GED Certificates while retaining the quality of the credential. The language is clear and understandable.

**Periodic Review**

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The Office of Adult Education and Literacy, Virginia Department of Education will review these regulations annually. The Adult Education and Literacy Advisory Committee will assist in the review process and recommend to the Board of Education, as appropriate, when further regulatory action is needed.

**Family Impact Statement**

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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The proposed Regulations Governing General Educational Development Programs will not erode the authority or rights of parents in the education, nurturing, and supervision of their children. Adults earning a GED Certificate will be better prepared to assist in meeting their own children's educational needs.

Earning a GED Certificate will assist recipients in increasing economic self-sufficiency. Earning a GED Certificate also will improve the self-pride of individuals and encourage them to take more responsibility for themselves and their families.

The proposed regulations will not erode marital commitment. GED Certificate recipients may increase their earning power if they use opportunities to increase their education and training related to employment.